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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,139

03/06/2007

Shinichiro Yamada

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02/12/2009

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EXAMINER

LEE, DORIS L

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

02/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/596,139

Applicant(s)

YAMADA ET AL.

Examiner

Doris L. Lee

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-23 is/are pending in the application.
- 4a) Of the above claim(s) 13-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The new grounds of rejection set forth below are necessitated by applicant's amendment filed on November 25, 2008. In particular, claim 1 which has been amended to include the limitations of the previous claims 8 and 9. The same grounds of rejection that have been used to reject the previous claims 8 and 9 are now used to reject the newly amended claim 1. Thus, the following action is properly made final.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. All outstanding objections and rejections, except for those maintained below, are withdrawn in light of applicant's amendment filed on November 25, 2008.

Claim Rejections - 35 USC § 103

4. **Claims 1-7 and 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Yamada et al (JP 2003-192925, see English language equivalent 2005/0143502)** in view of **Yoshida (US 2002/0151631)**.

The discussion in paragraphs 4 and 7 in the Office Action mailed out on August 25, 2008 is incorporated here by reference. It is noted that since the applicant has amended claim 1 to include the limitations of the previous claims 8 and 9, that the arguments presented for the previous claims 8 and 9 are herein incorporated into the rejection of claim 1.

Double Patenting

5. **Claims 1, 2 and 12** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1, 2, 4 and 8** of copending **Application No. 10/596,114 (PGPub 2007/0270527)**.

The rejection is set forth in paragraph 9 of the Office Action mailed out on August 25, 2008 and is incorporated here by reference.

Response to Arguments

6. It is noted that the applicant has requested the withdrawal of the double patenting rejection because they reserve the right to file an appropriate Terminal Disclaimer at the time of issuance of this application or the copending application. As the applicant has not yet filed the terminal disclaimer, nor presented arguments to overcome the double patenting rejection, the double patenting rejection has been maintained and set forth above.

7. Since references Yamada and Yoshida have been carried over from the preceding action, it is appropriate to address applicant's arguments concerning them.

8. **Applicant's argument:** Yamada does fails to teach a flame retardant composition with a hydroxide and a nitrogen oxide compound.

Examiner's response: *This has been remedied by the use of the secondary reference Yoshida.*

9. **Applicant's argument:** Yamada fails to teach of even fairly suggest the reaction described above between nitrogen oxide compounds and hydroxide compounds to produce an enhanced flame retardant. Yamada fails to teach or even fairly suggest a reaction similar to that between the hydroxide compounds and the nitrogen oxide

compound as required by the claims; it would not have been obvious to use nitrogen oxide as taught by Yoshida.

Examiner's response: *Yamada is the primary reference and teaches that any type of flame retardant can be used in the composition, including nitrogen flame retardant and that they can be used in combination ([0035]), and as the applicant states on page 7, section IV of the response mailed on November 25, 2003, Yoshida teaches a nitrogen oxide as a flame retardant compound. As such, it would have been obvious to combine as set forth in the rejection above. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).*

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doris L. Lee whose telephone number is (571)270-3872. The examiner can normally be reached on Monday - Thursday 7:30 am to 5 pm and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Vasu Jagannathan/

Supervisory Patent Examiner, Art Unit 1796